

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 CELLULAR ACCESSORIES FOR) Case No. CV 12-06736 DDP (SHx)
12 LESS, INC., a California)
corporation,)
13 Plaintiff,) **ORDER GRANTING DEFENDANTS' MOTION**
14 v.) **TO STRIKE PLAINTIFF'S FIRST**
15 TRINITAS LLC, a Texas) **AMENDED COMPLAINT**
limited liability company;)
16 DAVID OAKS, an individual,)
17 Defendants.)

)

19 Before the court is Defendant Trinitas LLC and David Oaks
20 (collectively, "Defendants")'s Motion to Strike Plaintiff's First
21 Amended Complaint. (Dkt. No. 37.) The matter is fully briefed and
22 suitable for decision without oral argument. Having considered the
23 parties' submissions, the court GRANTS the Motion for the following
24 reasons:

25 Federal Rule of Civil Procedure 15(a) provides that, except in
26 circumstances not relevant to this Order, "a party may amend its
27 pleading only with the opposing party's written consent or the
28 court's leave." An amendment to a pleading not made in conformity

1 with Rule 15(a) may be stricken as lacking legal effect. See Alan
2 Wright, 6 Federal Practice & Procedure: Civil 3d, § 1484, p. 685
3 (West 2010) ("In general, if an amendment that cannot be made as of
4 right is served without obtaining the court's leave or the opposing
5 party's consent, it is without legal effect and any new matter it
6 contains will not be considered unless the amendment is resubmitted
7 for the court's approval."); Larry O. Crother, Inc. v. Lexington
8 Ins. Co., 2011 WL 1084201, at *2 (E.D. Cal. March 21, 2011);
9 Jones v. Marinello, 2006 WL 2348891, at *2 (N.D. Cal. Aug. 11,
10 2006).

11 In the instant Motion, Defendants ask the court to strike
12 Plaintiff's First Amended Complaint ("FAC") on the ground that it
13 was filed without obtaining leave of the court or Defendants'
14 written consent. (Motion at 3-4.) The FAC was improperly filed on
15 March 3, 2014 and then refiled the following day, March 4, 2014.
16 (Dkt. No. 33-35.)

17 Plaintiff does not attempt to argue that it sought or
18 obtained leave of the court to file its FAC. Rather, Plaintiff
19 contends that it obtained written consent from Defendant when the
20 parties agreed to a stipulation on January 20, 2014 requesting that
21 the court extend the deadlines set by the Scheduling Order. (See
22 Opposition at 3.) Under the stipulation, which the court granted,
23 the expired April 1, 2013 deadline to join other parties and amend
24 pleadings was extended to March 3, 2014. (Dkt. No. 29, 30.) Relying
25 on a clause of the stipulation stating, "WHEREAS the Parties wish
26 to amend the pleadings," Plaintiffs contend that the stipulation
27 constitutes Defendant's consent to amend its Complaint.

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1 Defendants assert that their agreement to extend the amendment
2 deadline via the January 20, 2014 stipulation does not equate to an
3 agreement to the filing of a particular amended pleading. (See Mot.
4 at 4.) Rather, Defendants assert, the question of whether an
5 amendment is appropriate or not is a different question from
6 whether or not it is timely. (Id.)

7 The court agrees with Defendants that the FAC should be
8 stricken. The meaning of the clause quoted above from the January
9 20, 2014 stipulation, taken on its own, is ambiguous. However, when
10 the stipulation is viewed in the context of surrounding facts, it
11 is clear that the stipulation did not constitute Defendants'
12 consent to Plaintiff's filing of the FAC. Prior to filing the FAC,
13 Plaintiffs did not share a proposed FAC with Defendants. It would
14 be highly unusual for a defendant to consent to the filing of an
15 amended pleading without first reviewing it. Indeed, Defendants'
16 counsel asserts that when she spoke by phone with Plaintiff's
17 counsel on February 20, 2014 regarding the possibility that
18 Plaintiffs would file an amended complaint, Defendants' counsel
19 made clear that she would not consent to the filing of an FAC
20 without an opportunity to review it:

21 I told Mr. McWilliams during this call that obviously I would
22 need to review the proposed amended pleading before deciding
23 whether I could consider stipulating to granting Plaintiff
24 leave to file a First Amended Complaint. I never received any
25 proposed amended complaint and the first time I saw any
26 amended complaint was on March 3, 2014 when Plaintiff filed
27 its First Amended Complaint...

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1 (Declaration of Melanie J. Cogburn in Support of Motion ¶ 2.)
2 Plaintiffs do not contest the substance Defendants' counsel's
3 account of this discussion. (See Declaration of Rasheed McWilliams
4 in Support of Opposition; Declaration of Soseh Moghoyan in Support
5 of Opposition.) In sum, the facts in evidence support the
6 conclusion that Defendants did not provide written consent to the
7 filing of the FAC.

8 It also bears noting that the FAC was not timely filed even
9 under the deadlines imposed per the court's order granting the
10 parties' stipulation to extend dates set by the Scheduling Order,
11 which set March 3, 2014 as the last day to amend pleadings. (Dkt.
12 No. 30 at 2.) Plaintiff did not effectively file the FAC until
13 March 4, 2014, one day after the deadline, (Dkt. No. 35), having
14 incorrectly filed the FAC on March 3, 2014; the March 3, 2014
15 filing was stricken from the docket. (Dkt. Nos. 33, 34.) However,
16 because Plaintiff failed to obtain Defendants' written consent to
17 file the FAC, the FAC would be ordered stricken even if the court
18 were to deem it timely filed on March 3, 2014.

19 For the reasons stated, Defendants' Motion to Strike
20 Plaintiff's First Amended Complaint is GRANTED.

21
22 IT IS SO ORDERED.
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24
25 Dated: April 11, 2014



26 DEAN D. PREGERSON
27 United States District Judge
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